

The District's position is that the entire complaint is premature and "not ripe for decision by the PELRB" in that no employee has been disadvantaged by being prevented from receiving the early retirement option. The district further asserts that the remedy that the Association requests, i.e. a rewritten warrant and the call of a special district meeting for the purpose of taking legislative action is misplaced in that the District questions the authority of the PELRB to order it to apply to the court to call such a special meeting and the viability of such an action lacking any assurance that the result of the warrant article vote would be different from that of the original annual meeting. The District, after noting an apparent drafting error in the Association's reference to a date of a previous meeting as occurring in the year "2000" instead of 2001 in its complaint, withdrew any limitations of actions defense available to it provided by RSA 273-A:6, VII. The Association did supplement its complaint by letter addressed to its Executive Director, Parker Denaco, dated September 5, 2001, and that letter is deemed sufficient as an amendment regarding the date of the legislative meeting, and to the extent that it may be determined relevant, answers the verbiage in the District's answer that addresses the issue of "ripeness" of the Association's claim of harm. The District also asserts a laches defense to the Association's complaint.

The District requests the PELRB to dismiss the Association's complaint without prejudice.

PARTICIPATING REPRESENTATIVES

For the Association: James Allmendinger, Esquire, Staff Attorney,

For the District: John F. Teague, Esquire

ISSUE FOR DETERMINATION BY THE BOARD

After discussion at the Pre-Hearing Conference, it was determined by counsel that the following issues were relevant to the Board's consideration of this matter

1. Does the PELRB have jurisdiction to order the District to apply to the court for a Special District Meeting for the purpose of conducting a new vote on the District warrant regarding new costs items of the parties' tentatively agreed collective bargaining agreement?
2. Have the causes of action or requests for relief alleged in the Association's complaint been presented to the PELRB prematurely?

3. Has any harm been suffered by either those Association members that have elected or may elect to exercise an early retirement option, or to any other Association member from the manner by which the District proceeded from the tentative agreement between the parties through the presentation of the warrant before the District Meeting?
4. Did the District's actions in its manner or form of presenting cost item information to its legislative body constitute either: (letter references are to subsections of RSA 273-A:5 I)
 - a. Interference with its employees in the exercise of the rights conferred by RSA 273-A;
 - e. A violation of good faith bargaining by failing to submit to its legislative body any cost item agreed to in negotiations;
 - g. A failure to comply with RSA 273-A or any rule promulgated thereunder; or
 - i. Invalidate any portion of the agreement entered into

WITNESSES

For the Association (Petitioner):

1. Mary E. Gaul, Uniserv Director, NEA-NH
2. Scott Minickiello, President of the Association

For the District (Respondent):

1. Dixie Gorian, Chairperson of the Board, Negotiations Committee member
2. Larry Biron, Assistant Superintendent, Business Manager
3. Margaret Baker, Staff member, Municipal Services Division, Dept. of Revenue Administration

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Tentative Collective Bargaining Agreement
2. Existing Collective Bargaining Agreement
3. Warrant Article
4. Minutes of the School District's Deliberative Meeting
5. Ballot Question
6. Report of relevant vote tally

For the Association:

1. Supportive bargaining documents (to be defined more specifically if to be used at hearing)
2. No others than as stipulated to as joint exhibits

For the District:

1. Supportive negotiation notes
2. Any relevant correspondence between the District and the NH Department of Revenue Administration
3. No others than as stipulated to as joint exhibits

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than October 1, 2001.

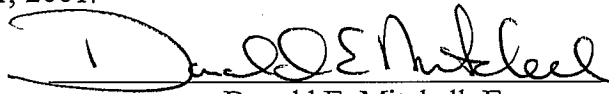
DECISION

1. It is anticipated that the District will file a Motion to Dismiss. If so, that motion shall be submitted no later than October 1, 2001 with either a separate memorandum of law in support of its motion or the incorporation of appropriate legal rationale and citation within its motion such as may assist the Board in its consideration of this case.

2. In the event of the timely filing of the District's anticipated Motion to Dismiss, the Association shall file any objection no later than October 9, 2001. This responsive pleading shall also be accompanied by either a separate memorandum of law in support of its objection or the incorporation of appropriate legal rationale and citation within its objection such as may assist the Board in its consideration of this case.
3. The party representatives shall forward complete Witness and Exhibit lists to the opposing representative or counsel and to the PELRB no later than October 15, 2001. The party representatives shall also meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. Any party that believes that it has properly and seasonably requested the production of any relevant document from the other party which it believes that party is in possession of, or has control over, said document and has not been provided with that document shall immediately inform the PELRB, in writing, of the document(s) requested, the date of the request, the date of the refusal to respond or to failure to comply with the request by the other party, and the purpose for which the party seeks the document from the other.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than October 1, 2001. Any objection to same shall be filed no later than October 9, 2001.
6. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on **Tuesday, October 23, 2001 beginning at 9:30 A. M.**

So Ordered.

Signed this 20th day of September, 2001.


Donald E. Mitchell, Esq.
Hearing Officer